



Arizona Utility
Investors Association

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ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

WILLIAM A. MUNDELL
CHAIRMAN
JAMES M. IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

OCT 19 2001 OCT 19 P 4:37

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IN THE MATTER OF THE APPLICATION OF) DOCKET NOS.
CITIZENS COMMUNICATIONS COMPANY, AGUA) W-01032B-00-1043
FRIA DIVISION, FOR 1) AN EXTENSION OF THE AREA)
COVERED BY ITS EXISTING CERTIFICATE OF)
CONVENIENCE AND NECESSITY, 2) APPROVAL OF)
CATERPILLAR PROPERTY WATER/WASTEWATER)
AGREEMENT, 3) APPROVAL OF THE TARIFF FOR THE)
WATER FACILITIES HOOK-UP FEE, 4) APPROVAL OF)
THE TARIFF FOR GENERAL NON-POTABLE WATER)
SERVICE, AND 5) APPROVAL OF RULE NO. 12)
APPLICABLE TO NON-POTABLE WATER SERVICE.)
IN THE MATTER OF THE APPLICATION OF CITIZENS) SW-03454A-00-1043
WATER SERVICES COMPANY OF ARIZONA FOR 1))
AN EXTENSION OF THE AREA COVERED BY ITS)
CERTIFICATE OF CONVENIENCE AND NECESSITY)
FOR WASTEWATER SERVICE, 2) APPROVAL OF THE)
CATERPILLAR PROPERTY WATER/WASTEWATER)
AGREEMENT, AND 3) APPROVAL OF THE TARIFF FOR)
THE WASTEWATER FACILITIES HOOK-UP FEE.)

AUIA'S COMMENTS IN RESPONSE
TO ISSUES RAISED BY THE COMMISSION

The Arizona Utility Investors Association (AUIA) hereby
files its comments with regard to the issues raised by the Arizona
Corporation Commission (Commission) at Open Meeting Oct. 2,
2001, as specified in the Procedural Order issued in this matter on
Oct. 5, 2001.

AUIA will address only the Commission's questions
regarding "need" and "urban sprawl" as they were expressed in
the language of the procedural order: "in evaluating a request for
extension of a CC&N, how the 'need' for the project is to be
considered by the Commission; and whether the issue of 'urban
sprawl' may be considered by the Commission in evaluating the
appropriateness of a request for extension of a CC&N."

1 **The Need Issue**

2 AUIA would not argue that the Commission could not or should not
3 consider need in connection with an application for a CC&N. Absent some
4 consideration of need the state could be blanketed with CC&Ns that serve no
5 valid public purpose.

6 However, need is established by the requirements of the potential end
7 user and in this case, the end user's need is palpable. The end user is a respected
8 developer, DMB, which has negotiated an agreement with the applicants
9 (collectively, Citizens) to provide water and wastewater service in the CC&N
10 extension area.

11 DMB has authority from the Town of Buckeye to proceed with
12 development of an 8,800-acre master planned community that will eventually
13 encompass more than 10,000 equivalent residential units (ERUs) and over 2,000
14 commercial units.

15 The extension area is adjacent to Citizens' Agua Fria Division. The Town of
16 Buckeye has neither the infrastructure nor the potable water resources to provide
17 water and wastewater utility service to the area.

18 The developer's assessment of its need is underscored by the fact that it is
19 prepared to advance approximately \$30 million to the applicants to construct
20 backbone facilities, to be repaid through service connection fees.

21 **Urban Sprawl**

22 The requirement for Public Service Corporations (PSCs) to obtain CC&Ns
23 and the Commission's authority to grant them are set out in A.R.S. §40-281 and
24 A.R.S. §40-282. Typically, the courts have construed narrowly the limits of
25 statutory authority granted to the Commission and that should be the case here.
26 Nowhere in statute is the Commission empowered to consider local land use
27 issues in connection with a CC&N.

28 In fact, it is unthinkable that the Commission might don the mantle of a
29 statewide planning and zoning commission. These matters are properly under
30 the jurisdiction of county and municipal governments and the Commission has
31 no authority to override or overrule their judgments.

1 The Commission's role in granting or denying a CC&N should be focused
2 on determining whether the applicant is a fit and proper entity and whether
3 granting the Certificate is in the public interest. In this case, the public interest is
4 defined by the commitments of the developer and the governing municipality.

5 However, let's cut to the chase. The real issue here is whether the
6 Commission has the authority to deny utility service to a developer or end user,
7 especially when there is a fit and proper entity prepared to deliver that service.
8 AUIA believes that the Commission does not have that authority and we would
9 argue that the Commission has an affirmative duty to enable utility service when
10 it can be provided on acceptable terms.


11 **Conclusion**

12 The "need" for the service extension sought by Citizens – in any context
13 that is within the Commission's purview – is clearly established by the actions of
14 the developer and the Town of Buckeye. Land use issues are the province of
15 local government and are not proper criteria for the Commission to consider in
16 granting CC&Ns.

17 The Commission cannot deny utility service to developers or end users
18 when it would otherwise be available. To assume otherwise would allow the
19 Commission to become the chief arbiter of where development can take place in
20 all areas served by private water companies.

21 For these reasons, AUIA requests that the Commission grant the CC&N
22 extension sought in this Application.

23
24 Respectfully Submitted, this 19th day of October, 2001.

25 
26 _____

27 Walter W. Meek, President
28

29 **CERTIFICATE OF SERVICE**

30
31 An original and ten copies of the
32 foregoing Comments filed this
33 19th day of October, 2001 with:

34
35 Docket Control
36 Arizona Corporation Commission
37 1200 W. Washington Street
38 Phoenix, AZ 85007

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